

**City of Newburyport
Joint Public Hearing
Planning Board and Planning & Development Subcommittee
May 4, 2016
Minutes**

The meeting was called to order at 7:00 PM.

1. Roll Call

In attendance for the Planning Board: James Brugger, Jim McCarthy, Doug Locy, Leah McGavern, Andrew Shapiro, Bonnie Sontag and Don Walters

Absent from the Planning Board: Sue Grolnic

In attendance for the Planning & Development Subcommittee of the City Council: Councilor Jared Eigerman, Councilor Barry Connell, and Councilor Ed Cameron

Planning & Development Director Andrew Port and City Councilors Bruce Vogel, Bob Cronin, Sharif Zeid, Larry Gunta and Charlie Tontar were also present.

2. Planning Board and Planning & Development Committee of the City Council Joint Public Hearing on proposed zoning amendments:

- b) Amend the Newburyport Zoning Ordinance and the “Zoning Map of the City of Newburyport” pursuant to Section III-D “Changes to Zoning Map” such that the Downtown Overlay District (Section XXVII) is expanded to include Parcels 35-39 (13.5 Pond Street), 35-40 (5 Central Place), and 35-160 (149 High Street), and all other land, as depicted on a map entitled “DOD Zoning Map Change – Proposed,” prepared by the Office of Planning & Development, and dated February 8, 2016.*

Director Port displayed a map of the area. Councilor Eigerman, co-sponsor, said the DOD had been in place for two years. The amendment would not replace use. He summarized the characteristics of the zone and the unique arrowhead shape. A prime development site whose shape and size differed from everything else, the commercial zone situated on Bartlett Mall had no design review and it was imperative to close the gap. Director Port said the Planning Office recommended approval because the historic area needed the protection of design control. Councilor Connell asked if the zoning consultant had offered comments? Director Port said there was no recommendation except to consolidate the business district within the underlying zone. The amendment was consistent with changes the City was making in the commercial district. Councilor Cameron said the little bump out was the CVS childcare area. Councilor Eigerman said it was not crucial to include the bump out owned by CVS because there was not much CVS could do there. Director Port said the area was an extension of an existing district and not spot zoning. It might make sense to look at other parcels in the area. Councilor Eigerman said to reference *Andrews v. Town of Amherst* to understand spot zoning.

Public comment open.

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Public comment closed.

Chairman McCarthy said Bartlett Mall was an underutilized asset. He hoped Kelly School residents adopted and activated the Mall. The amendment was a tool for that purpose. There should be a commercial component for CVS, but Pond Street should remain residential.

Leah McGavern made a motion to recommend amending the Newburyport Zoning Ordinance and the “Zoning Map of the City of Newburyport” pursuant to Section III-D “Changes to Zoning Map.” Andrew Shapiro seconded the motion and all members voted in favor.

Motion Approved.

During the course of discussion and consideration of this application, plan(s), supporting material(s), department head comments, peer review report(s), planning department comments and other related documents, all as filed with the planning department as part of this application and all of which are available in the planning department, were considered.

Councilor Eigerman moved to excise the small lot from the amendment. Councilor Cameron was against the excise. Councilor Connell wanted more information. Councilor Eigerman said the small lot was indistinguishable from the other lots around it and not very usable. The subcommittee could check with the City solicitor. A board member asked how the small lot would be zoned if it was not included? Councilor Eigerman said the lot’s underlying R2 zoning was different. Councilor Cameron said the little plot could not be accessed without going through the CVS parking lot. Councilor Eigerman withdrew his motion. Councilor Cameron said design controls would improve the next development in this location.

Councilor Ed Cameron made a motion to recommend amending the Newburyport Zoning Ordinance and the “Zoning Map of the City of Newburyport” pursuant to Section III-D “Changes to Zoning Map.” Councilor Barry Connell seconded the motion and all members voted in favor.

Motions Approved.

During the course of discussion and consideration of this application, plan(s), supporting material(s), department head comments, peer review report(s), planning department comments and other related documents, all as filed with the planning department as part of this application and all of which are available in the planning department, were considered.

- c) *Amend the Newburyport Zoning Ordinance (NZO) Sections X-C.3 (Duties of the inspector of buildings: Records), X-D. (Permits), and XVIIC, (Plan requirements: Plans to accompany building permits) to require that:*
 - (a) *the Newburyport Inspector of Buildings (Building Commissioner) maintain a record of all permits applicable to properties within the City, including those decisions issued by City boards, commissions or departments, and further including a copy of any plans or supporting documents referenced or incorporated within such decisions;*
 - (b) *applications for all building permits shall be accompanied by a complete record of any decisions issued by any City boards, commissions or departments, and further*

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including a copy of any plans or supporting documents referenced or incorporated therein:

(c) no building permit may be issued by the Inspector of Buildings (Building Commissioner) if the proposed work would be in violation of any provision of the NZO or any decision issued by any City boards, commissions or departments, including conditions or specifications contained on any plans or supporting documents referenced or incorporated therein;

(d) no Occupancy Permit may be issued by the Inspector of Buildings (Building Commissioner) unless all uses and construction on the subject property and/or structure are in compliance with the NZO and any decision issued by any City boards, commissions or departments, including conditions or specifications contained on any plans or supporting documents referenced or incorporated therein;

(e) all applications for a building permit shall be accompanied by plans which comply with all decisions issued by any City boards, commissions or departments applicable thereto.

Chairman McCarthy said after 12 years of observing the lack of accountability for changes in the field he initiated the proposal. The new building commissioner was a timely change. Director Port agreed and said codifying state and case law should diminish the disconnect in the field and lead to better enforcement of ZBA and Planning Board decisions. Councilor Eigerman checked in with Courtenay Starling, the zoning consultant, who suggested grammatical changes, and also with the new building commissioner, Peter Binette, who agreed it was good to spell out what was currently done. The change did not create additional record keeping costs. Plans for what could be built were on hand, they just needed to be read. Feedback was argumentative from builders who would not get a building certificate until they could show everything had been satisfied.

Public comment open.

Jeanette Isabella, 1 Lime Street, asked how 77 Lime Street could occur if this process was what the City already did? Chairman McCarthy said no ordinance could fix every problem because of so many moving parts in the building process. His goal was a better process.

Tom Kolterjahn, 24 Federal Street, co-chair of the Newburyport Preservation Trust, said the trust supported the amendment to improve record keeping and coordination of information within the City. There was a problem when records were not always present.

Councilor Bob Cronin, Ward 3, wanted to require as-builts to catch more changes.

Councilor Joseph Devlin, at-Large, questioned the language on page 2, X-d that seemed to require showing the entire building department's file for a bump out on the back of a house. How far back in time would records be required? Councilor Eigerman said applicants needed to produce only the written decision. Director Port said the Building Office had access to the records but were not always viewing them. Most records for a decision were in City Hall. Commissioner Binette would most likely send applications to the Planning Office to verify decisions related to it. Councilor Devlin did not want applicants reproducing a file that already existed in the building department. Chairman McCarthy said applicants should produce decisions relevant to the project. All decisions were at the registry of deeds. Councilor Eigerman said

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currently nobody checked the decisions. Applicants should attach every previous decision that was germane. Director Port suggested adding the words 'applicable or relevant' to the words 'complete copies.' Councilor Eigerman agreed. The applicant's burden was not to hide previous decisions in order to game the system.

Director Port said most variances and special permits were on the mapping system, although a few were not linked properly. The City was working on a webpage upgrade to show the record and related documents as linked attachments. The commissioner would not need paper copies of everything. A board member asked if the building commissioner used the mapping software to get the decisions? Members responded not in the past, but it would be required going forward. Councilor Devlin said not everyone gamed the system. Legislating around errors was not possible. The City should have the strength to issue a cease and desist order. The process would be burdensome for people not trying to game the system. Councilor Eigerman said the offending word was 'copies.' What if an applicant cited the decisions? Councilor Connell asked how one could cite decisions without doing the research? Director Port said the applicant would reference a file number or the decision date and the building commissioner would pull the decision. Councilor Devlin agreed. Councilor Gunta said people gamed the system later in the process, once building began. Tightening up what was built would address where the City was failing. The ordinance was a policy and procedure for the building department yet the building commissioner was not present nor had he provided a letter. Before the ordinance came before the Council a statement should be requested from the building commissioner.

Director Port said his conversation with Commissioner Binette about the amendment did not identify any problems. The building commissioner's primary concern was the practical application of the amendment with no time to research every application on a daily basis. They agreed applications could be sent to the Planning Office for checking. The Planning Office could quickly respond to the applicant or the building commissioner. Chairman McCarthy agreed. The goal was to get someone to look at previous decisions. A board member said no occupancy permit could be issued unless everything had been looked at on site and on the plans and was signed off on. Chairman McCarthy said the commissioner would be prompted to send an application to Planning Office if he couldn't sign off. A board member said errors during construction would have the corrective step of the occupancy permit.

Cheryl Fisher, 304 Merrimac Street, wanted follow up on projects. She asked who had eyes on a project during construction? The language left too much room for accidents. Stronger language for oversight was needed to protect abutters.

Jim McCauley, 27 Storeybrooke Drive, said the builder had no skin in the game. If the occupancy permit was withheld a builder would simply re-file the plans. Tougher enforcement language was needed to hold the builder accountable and for the City to protect abutters. If the building inspector found a change order that was not on a plan, there could be a six months wait before the occupancy permit was issued. A percentage of the project should be used as a fine. Councilor Eigerman said state law mandated a maximum fine per day. No one in the City can remember ever delivering a fine.

Ms. Fisher said a cease and desist order was more effective; a fine did nothing for abutters. A builder lost money every day a project was on hold. Councilor Eigerman said the ordinance was

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meant to tackle the problems caused by record keeping. Cease and desist was not a tact for this amendment. The enforcement section tracked state law. The commissioner had a duty to explain in writing why he was not enforcing. An aggrieved party could take him to court. The intent was to put the burden on the applicant because Commissioner Binette had no time to do the research.

Councilor Charles Tontar, Ward 4, said paragraph C indicated the onus was on the building commissioner to be aware of all decisions for a project and issue the permit. How would the commissioner pick up on the omission of a couple of decisions by someone gaming the system? The commissioner would need to do the research. If an applicant failed to cite some decisions, the applicant's process would slow down. Councilor Eigerman said the commissioner would say to an applicant, "you're not getting the permit until you go upstairs and check on the decisions for the project." The applicant could get a sign off from the Planning Department. Chairman McCarthy said if a process were in place, applicants would be in contact with the Planning Office every time. A punitive process would not work and did not help abutters.

Councilor Sharif Zeid, Ward 1, said not every building permit was for a developer. What did the ordinance say about rebuilding a kitchen? The applicability to every project seemed greater than the intent. Was there a purpose showing a variance from 1982 in an application? The amendment should limit an applicant's liability to the records on file at City Hall rather than be on the hook for something the City did not have on file. The type of thing that warranted the building commissioner to send an applicant back to the boards if a builder encroached should be better articulated to define when that should occur and when not. The City should not ensnare people unnecessarily. Councilor Eigerman said the City wanted to know of any relevant decision. Massachusetts's statutory and case law directed the building commissioner to determine when an applicant returned to a board. Applicants appealed through the Zoning Board of Appeals. That was a normal process. Chairman McCarthy said most building permits were by right. The board was never involved in by right applications. Councilor Eigerman said under state law, a decision not filed with the Registry of Deeds or City Hall was not enforceable. Director Port said the issue could be addressed using the words 'applicable or relevant.' The Planning Office would research the decisions. He would include the relevant wording for citing the decisions on the building permit form. Chairman McCarthy said the board wanted some decisions to stick for 20 years. When a builder needed to modify and came back, he would like that event to increase discussions in City Hall. The new process was: 1) Check before you build, 2) Get the Planning Office to sign off and 3) Be in compliance if you want an occupancy permit. It was an improvement over the process used today.

Jeannette Isabella, 1 Lime Street, asked how a project like Mr. India was approved? How could residents be assured field errors would not continue? Most residents could not understand how field errors could happen to begin with. Chairman McCarthy said that 90% of what went on in the City was non-conforming and that was unusual for a City. The process had been particularly rough in the last decade. The planning and zoning permitting authorities were trying to do what a historic district would accomplish. The process of checking what came before and building what your application said you are approved to build is an improvement in and of itself.

Chairman McCarthy asked for comments on the punitive portion. Members said with holding the occupancy permit was punitive. A cease and desist option could be considered. A member considered whether the Pine Street and 77 Lime Street projects would have been prevented if the

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amendment had been in place and concluded that those project would have depended entirely on the building commissioner and whether he was invested in the process and watching buildings as they progressed. Councilor Connell said the amendment might ensure due diligence with the sign off from the Planning Office. Chairman McCarthy considered that also and said that Councilor Eigerman had put forward a desire to give the building commissioner a chance. The building department's permit numbering system did not identify the presence of decisions. Chairman McCarthy was not willing to legislate the punitive.

Board members questioned the word 'relevant.' Some applicants would not know what was relevant and what was not. Why not cite all decisions when it was not a hard task? Councilor Eigerman reminded the board of Councilor Devlin's concern for the burden if there were a lot of decisions, but usually there were not a lot. Board members preferred to remove the word 'relevant.' Director Port thought the relevant language was fine. A member said that if the amendment just said 'decisions' all bases were well covered.

Public comment closed.

Bonnie Sontag made a motion to recommend amending the Newburyport Zoning Ordinance (NZO) Sections X-C.3 (Duties of the inspector of buildings: Records), X-D (Permits), and XVIIC, (Plan requirements: Plans to accompany building permits). James Brugger seconded the motion and all members voted in favor.

Motion Approved.

During the course of discussion and consideration of this application, plan(s), supporting material(s), department head comments, peer review report(s), planning department comments and other related documents, all as filed with the planning department as part of this application and all of which are available in the planning department, were considered.

Councilor Cameron wanted to keep the word 'relevant.' Councilor Eigerman and Councilor Connell both agreed, although Councilor Connell was uneasy about modifiers. He did not have a strong opinion in this case.

Councilor Jared Eigerman made a motion to recommend, as amended with 'citations to any relevant decisions,' the amendment to the Newburyport Zoning Ordinance (NZO) Sections X-C.3 (Duties of the inspector of buildings: Records), X-D (Permits), and XVIIC, (Plan requirements: Plans to accompany building permits). Councilor Barry Connell seconded the motion and all members voted in favor.

Motion Approved.

During the course of discussion and consideration of this application, plan(s), supporting material(s), department head comments, peer review report(s), planning department comments and other related documents, all as filed with the planning department as part of this application and all of which are available in the planning department, were considered.

Councilor Cameron left at 8:18 PM. Councilor Eigerman chaired.

- a) Amend the Newburyport Zoning Ordinance Section XXIX-B (Smart Growth District: Establishment & Applicability) to include a new subsection (4) entitled “Intersection of State and Parker Streets which provides as follows: “until such time as the City’s Director of Public Services certifies to the City Council that U.S. Route 1 has been rebuilt, reconfigured, retrofitted, or otherwise improved to ensure safe pedestrian access across U.S. Route 1 within the Smart Growth District and south of Parker Street, development of a Project pursuant to this Section shall not be permitted at any of the following parcels located near the intersection of State Street and Parker Street: Parcel 34-5 (165 Parker Street); Parcel 34-6 (3 Parker Street); Parcel 34-9-A (4 Parker Street); Parcel 34-11 (163 State Street); Parcel 34-12 (161 State Street); and Parcel 34-13 (151-155 State Street).”*

Director Port displayed a map of the 40R. Councilor Eigerman, co-sponsor with Councilor Meghan Kinsey, said Director Port spent considerable time coordinating the amendment with the state. Councilors were concerned with the size of the district. His intent was to correct his mistake in the original ordinance because there were no pedestrian connections to the train station from remote parcels in the district. The closest legal crossing on Route 1 was too far north, at Hill Street. Councilor Cronin had agreed to a wording change of ‘until such time as someone can cross safely.’ Until that time, by right zoning did not make sense. The amendment would act as a lever to slow down development rather than to threaten MA DOT into spending millions of dollars. The City would be more likely to get state money without the amendment, but as the ward councilor, he could not support it without a way to cross Route 1. The City would be under the 501-unit threshold for future build out. State money should not be a deciding factor. The City could earn \$250,000 back once pedestrian connections were in place to unfreeze development.

Chairman McCarthy said when the board was 90% through the first project with MINCO, they learned that more rigorous language for pedestrian connections and traffic circle requirements were needed in the entire 40R because that need affected every part of the district. The Merrimack Valley Planning Commission (MVPC) and the Traffic Safety Advisory Committee (TSAC) all agreed better language was needed. Director Port said the Massworks grant for the new pump station would deal with current issues and any new growth. A board member said that type of grant was usually tied to private or public economic development. Would the amendment hurt the City? Director Port said the City was given the award because the 40R met the state’s requirements for development. The amendment did have the potential to harm the City’s reviewed by the DHCD. Councilor Eigerman said the difference was between 520 and 500 units. Director Port suggested a way to avoid creating problems by changing words to say ‘any development is required to make the pedestrian connection improvements peer reviewed by the City’ rather than saying development was prohibited.

Public comment open.

Councilor Bruce Vogel, At-Large, said changing the 40R boundaries would open a can of worms. He preferred to put the onus for pedestrian connections on developers.

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Councilor Bob Cronin, Ward 3, and co-sponsor of the amendment, said the new condominium development on Parker Street did not help pedestrians get to the train. The amendment was for safety reasons. He had concerns about several aspects of the density. The mayor had said the City could petition the state for reductions and modify the ordinance at any time. The City was losing total local control. Director Port said the DHCD had not said the City had lost local control. The City could pass the amendment and repay funds given by the state or accept reduced funds for reducing the size of the district. Chairman McCarthy said the City had committed to building a sidewalk to Route 1 from inside the business park. The board needed a tool requiring developers in the 40R to continue what the City had started.

Rob Germinara, 2 Ashland Street, said the City had not abandoned the right of way on Parker Street in front of the courthouse and could cut through the guardrail for access to the right of way while it was under construction. Councilor Connell asked to see the location referenced by Mr. Germinara. Director Port said a detailed drawing would be needed and Mass DOT was out there now. It was a good idea, but Mass DOT could say they were only resurfacing. Councilor Eigerman said the proposed language did not address crossing Route 1. Director Port referenced Tropic Star's improvements to Storey Avenue, as part of their project, in order to get a building occupancy permit. The City could do the same thing with developers in the 40R.

Councilor Charles Tontar, Ward 4, said Director Port's proposal accomplished the same thing.

Councilor Eigerman said the DHCD had not reviewed Director Port's amendment. Director Port recommended changing 'may' to 'shall.' Chairman McCarthy said the issue was greater than Route 1. A whole solution to get pedestrians all the way across was from Parker Street east to Parker Street west. Councilor Tontar said that concept was entailed in Director Port's recommended change. Chairman McCarthy agreed. Councilor Eigerman said the next step was to run the amendment by the DHCD. The amendment was written such that the City was okay without the \$250,000. Councilor Cronin said a set of hash marks across Route 1 was insufficient. There were severe site line problems at Courtyard Roast Beef.

Tom Kolterjahn, 64 Federal Street, co-president, Newburyport Preservation Trust, said crossing Route 1 was a serious problem that needed addressing.

Board members were in agreement in asking the councilors how the problem would ever get fixed if there were no development to drive the solution? If Mass DOT did not own the problem they would not solve the problem. Developers would want to make crossing safe for their own projects, the way MINCO had done. Chairman McCarthy said the permitted MINCO project, as the largest project in the 40R, could not afford to fix the entire traffic circle. The solution had to be that the state worked the traffic circle and the developers worked the pedestrian crossing.

Councilor Sharif Zeid, Ward 1, said he would rather have the state on the hook and supported Councilor Eigerman's proposal. The state worked on a long time line.

Councilor Eigerman said he was not willing to live with a by right development that may or may not fix the problem. Councilor Devlin said there could never be a safe crosswalk across Route 1. Director Port's changes were good tools for the board, but Councilor Eigerman's changes demanded the traffic circle be fixed.

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Chairman McCarthy said one path was to keep the regulation and get improvements from every developer. Developers would never fix the traffic circle. The choice was to enact Councilor Eigerman's suggestion and not permit building until the traffic circle was fixed by the state in perhaps five years or allow development that would require the state to take action. Councilor Eigerman said he did not care how long the City waited for the traffic circle fix. Councilor Cronin said he supported losing \$250,000 to gain \$3-4 million in a fixed traffic circle. Councilor Connell wanted to change the terms used about crossing Route 1. No one believed a crosswalk would be safe; there would be a bridge or a tunnel. The decision should not rest on \$250,000.

Mr. Germinara said there was a cross walk across Route 1 at present and there would be a sidewalk to nowhere. He supported Councilors Connell, Cronin and Devlin.

Councilor Larry Guntz, Ward 5, supported Councilor Eigerman's amendment. He voted against 40R. Adding 500 more cars and bicycles only increased concerns about how to navigate the streets. His goal was to send a message to the state that residents could not get to the train. Money was not a big deal but public safety was. The City would need a lot of help from the state to build a dense neighborhood on purpose.

Public comment closed.

Chairman McCarthy asked if the board was willing to take a small improvement in the 40R to get incremental improvements from the developers or accept a longer term to fix the problem fully? Board member comments: Did the City understand the mechanism for getting the state to do the work? Chairman McCarthy said yes, from working on the issue with the MVTA and the state. Councilors preferred to forgo funds until the traffic circle and pedestrian safety issues were fixed by the state in a longer-term process. Director Port's suggestion was a shorter-term process. What choice was better for pressuring the state? Director Port said he believed Mass DOT operated in a vacuum and could not be rushed by other state agencies. Maybe the DHCD would advocate additional funding. Members did not have the DHCD's opinion on Director Port's amendment, but thought it would not have a negative effect. The traffic circle problem existed before the 40R and required fixing regardless of the 40R. There were reservations about holding the 40R hostage to whatever the DOT would eventually do. One member would not move forward with the amendment as proposed because too much would be missed. Two members agreed. The positions were close. Either way, Route 1 had to be fixed. Chairman McCarthy wanted language expanded to include Parker Street east to Parker Street west.

Councilor Eigerman did not want by right, high-density housing allowed until the problem was fixed. Director Port's amendment was not strong enough and required working out with the DHCD. Director Port said his wording put the onus on developers to fix the problem. Members said the board could compel developers to provide peer review documents. Chairman McCarthy said he was not influenced by \$250,000, but wanted the 40R to stay the same size and the problem fixed. He also wanted a State Street intersection crossing. Members asked when there would be DHCD feedback on Director Port's proposal? Director Port said DHCD indicated a clear preference for his amendment but could not respond until they had legal counsel input.

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Andrew Shapiro made a motion to recommend Director Port's amended language and changing 'may' to 'shall.' James Brugger seconded the motion and all members voted in favor.

Motion Approved.

During the course of discussion and consideration of this application, plan(s), supporting material(s), department head comments, peer review report(s), planning department comments and other related documents, all as filed with the planning department as part of this application and all of which are available in the planning department, were considered.

Councilor Eigerman said Director Port's language did not specify that no one could build until there was a safe crossing. While the board believed the City would give up too much, he did not want by right building and his amendment removed the by right. Councilor Gunta said the point was the language change implied private developers would not have enough money with their small parcels to build a footbridge across Route 1. He preferred to position the City in the best way for the state to help fix the problem. Councilor Devlin supported a separate amendment to give the board more tools. Councilor Tontar said it was unrealistic to believe anything the City did would put pressure on the state. He supported the councilor's amendment because it was unlikely a developer would spend the money to fix the problem. Councilor Vogel said there was an advantage if the ordinance remained and Director Port's language was adopted. A developer would have an incentive to fix the problem. If the council voted it away, the City would never get it back. Councilor Connell wanted more information about the state's intentions regarding Director Port's amendment. He was unsure which language was best. He acknowledged that Councilors Eigerman, Vogel and Tontar believed the City would have to wait until the 40R crumbled to get the traffic circle changed and the board did not want to lose this part of the 40R. He was willing to give up this part of the Smart Growth District until the problem was fixed and suggested sending the matter to the full council without a recommendation. Councilor Eigerman said the Council would need DCHD feedback to take up Director Port's amendment. Director Port hoped feedback came by the end of this week or before Monday. Councilor Connell suggested giving the Planning Office more time. Councilor Eigerman did not want to wait indefinitely. Councilor Connell said there would be no vote and he would talk to the Council Chair. If information from the state arrived, the subcommittee would convene before the Monday meeting. If not, the matter would be taken up by the next Council meeting.

Chairman McCarthy asked all councilors include a full traffic study and peer review from Director Port's proposal if they approved Councilor Eigerman's amendment.

- d) Amend the Newburyport Zoning Ordinance (NZO) Section X-H.6.I, (Variances), Section X-H.7.B, (Special permit conditions), Section XVH, a.6, (Development and performance standards), and Section XV-L.f. (Mandatory conditions) to require that:***
(a) in all cases where a Variance is granted for a project with an estimated construction cost of no less than one hundred thousand dollars (\$100,000), the board shall require the applicant to pay for the cost of reconstructing, repairing or replacing City-owned sidewalks and street trees adjoining the project site or provide an equivalent payment in-lieu to the City in consultation with the Department of Public Services and Tree Warden, respectively;

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(b) in all cases where a Special Permit is granted for a project with an estimated construction cost of no less than one-hundred thousand dollars (\$100,000), the Special Permit Granting Authority shall require the applicant to pay for the cost of reconstructing, repairing or replacing City-owned sidewalks and street trees adjoining the project site or provide an equivalent payment in-lieu to the City in consultation with the Department of Public Services and Tree Warden, respectively;

(c) in all cases where Site Plan Approval is granted for a project with an estimated construction cost of no less than one-hundred thousand dollars (\$100,000), the board shall require the applicant to pay for the cost of reconstructing, repairing or replacing City-owned sidewalks and street trees adjoining the project site or provide an equivalent payment in-lieu to the City in consultation with the Department of Public Services and Tree Warden, respectively;

(c) no building permit shall be issued unless the Department of Public Services and Tree Warden (respectively) certify to the Planning Board that proposed work involving City-owned sidewalks and trees has been reviewed and approved and will be constructed accordingly.

A member said in ten years \$100,000 could be a simple project due to inflation. Square footage was preferable. Councilor Eigerman was comfortable with square footage or a dollar value. He wanted to capture significant projects, not every special permit project. Chairman McCarthy asked if it was legal to require the amendment on a by right project? Councilor Eigerman said if a by right project burdened the sidewalk the amendment would apply. Chairman McCarthy said the building commissioner did not want a kitchen renovation swept up in the requirement. Councilor Eigerman said internal reviews would ascertain when projects affected the sidewalk. DPS was the custodian of the sidewalks. It was understood in the rest of the nation that large projects would improve sidewalks. Sidewalk work would be done to DPS specifications. Chairman McCarthy said the board asked applicants for concessions. If sidewalks were mandated, that took them off the table for a trade. Director Port's draft said the board may ask for sidewalks, but it was not mandatory. Councilor Connell asked about using 'moving an envelope wall' as a threshold? Members asked about using a percentage of building value?

Public comment open.

Rob Germinara, 2 Ashland Street, said he had seen 30 examples of contractors finishing projects and replacing 50% of the sidewalk. The amendment was a tool that required 100% sidewalk renovation. The City had missed many opportunities to repair sidewalks in the last 2-3 years.

Tom Kolterjahn, 24 Federal Street, co-president of the Newburyport Preservation Trust, said the trust was in support. Better developers installed brick sidewalks and trees. Mediocre developers put in concrete. Others developers did nothing and make millions. Make them contribute.

Councilor Drew Devlin, At-Large, said he was not sure the City could attach a monetary value to the amendment legally. Residents who paid taxes for sidewalks maintenance would be upset. Developers should be responsible. He wanted input from Deputy Director Wayne Amaral on the burden the amendment placed on his department. Chairman McCarthy said the trigger was very important and he had concerns.

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Councilor Sharif Zeid, Ward 1, urged everyone to steer away from the by right. If a project was 80% non-confirming he was wary of attaching the requirement.

Public comment closed.

Chairman McCarthy asked Councilor Eigerman if there was enough input to get the amendment going? He would like to continue the item for another joint public hearing. Director Port said a date was needed. Councilor Eigerman thought the matter could be resolved on Monday.

James Brugger made a motion to continue the Joint Public Hearing to May 18th. Andrew Shapiro seconded the motion and all members voted in favor.

Motion Approved.

During the course of discussion and consideration of this application, plan(s), supporting material(s), department head comments, peer review report(s), planning department comments and other related documents, all as filed with the planning department as part of this application and all of which are available in the planning department, were considered.

5. Adjournment

Councilor Barry Connell made a motion to adjourn. Councilor Jared Eigerman seconded and all members voted in favor.

Leah McGavern made a motion to adjourn. James Brugger seconded the motion and all members voted in favor.

The meeting adjourned at 10:20 PM.

Respectfully submitted -- Linda Guthrie